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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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MARC SPITZER
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KRISTIN K. MAYES

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Arizona Corporation Commission

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IN THE MATTER OF THE COMPLAINT OF
ESCHELON TELECOM OF ARIZONA, INC.
AGAINST QWEST CORPORATION

DOCKET NO. T-03406A-06-0257
DOCKET NO. T-01051B-06-0257

**ESCHELON'S RESPONSE TO QWEST'S REQUEST FOR HEARING ON
MOTION TO RECONSIDER THE HEARING SCHEDULE**

Eschelon Telecom of Arizona, Inc. ("Eschelon") hereby responds to Qwest's Request for Hearing on its Motion to Reconsider the Hearing Schedule ("Request for Hearing"). Eschelon asks the Commission to deny the Request for Hearing, if any action is required, because Qwest's Motion to Reconsider the Hearing Schedule ("Motion to Reconsider") was deemed denied on June 29, 2006 by operation of the June 6, 2006 Procedural Order in this docket. The Commission's June 6, 2006 Procedural Order specifically provides, on page 4: "any motions which are filed in this matter and which are not ruled upon by the Commission within 20 days of the filing date of the motion shall be deemed denied." Qwest filed its motion on June 9, 2006. It was deemed denied 20 days later per the Order. Since then, Eschelon has relied upon that schedule, and the deemed denial, and has filed its direct testimony in accordance with the ordered schedule. Allowing Qwest more time now, when Qwest has the benefit of having received that testimony, would be prejudicial.

The Commission was clear in its June 6th order that this matter was to proceed according to its ordered schedule. The Commission did not stay the schedule during the 20-day period after the

1 motion, which was deemed denied on the 20th day. Qwest said on page 3 of its June 9th filing that,
2 to the extent "the Commission schedules a hearing before January 2007, Mr. Steese will be forced
3 to withdraw from this case." Qwest has been on notice since June 29th that the current schedule
4 will remain in place. It has had ample time to make any necessary arrangements. Also, as
5 Eschelon indicated in its previous response, Qwest has already assigned two other lawyers to this
6 case, including Norm Curtright of Phoenix and Melissa Thompson, who has been admitted pro hac
7 vice in this matter. In short, there is no "double hardship" to Qwest as alleged in its Request for
8 Hearing. Qwest has been on notice that it needed to be prepared to replace Mr. Steese since the
9 Procedural Order was entered back on June 6, 2006 with no stay and particularly since the Motion
10 to Reconsider was deemed denied on June 29th.

11 As stated in Eschelon's prior Response to Qwest's Motion to Reconsider, there was ample
12 reason to deny Qwest's Motion to Reconsider. Qwest is simply attempting to re-urge its previous
13 arguments for a delayed schedule. The same basic arguments were made and heard at the May 23,
14 2006 procedural conference and in Qwest's June 2, 2006 filing regarding a proposed schedule,
15 albeit in more detail. The arguments failed, and the Procedural Order has remained in place.

16 The Procedural Order was entered on June 6, 2006. Qwest filed its Motion to Reconsider
17 on June 9, 2006, but waited until now, July 20, 2006, to request a hearing – six days *after* the
18 known July 14th deadline for the filing of Eschelon's direct testimony. By waiting until after
19 Eschelon's direct testimony was filed, Qwest is attempting to gain an advantage by extending its
20 time to respond to that testimony. If scheduling conflicts with the hearing dates were the real
21 issue, Qwest could have done so before the known direct testimony deadline. If Qwest had wanted
22 its Motion to Reconsider heard orally, it should have requested oral argument in its Motion. It is
23 too late to do so after the motion was deemed denied. In the interim, Eschelon has been working
24 to prepare its case for hearing as required by, and in good faith reliance on, the June 6 Order.
25 Finally, Qwest's assertion that "the October hearing date is questionable" because neither party has
26 noticed depositions provides no basis for altering the schedule. This case, whether decided upon
27 the law or the facts, depends in large part on documents prepared by Qwest. Eschelon is unaware

1 of any need or basis for depositions in this document-based case. Although Qwest said it has had
2 no indication that Eschelon has modified its intentions with respect to depositions, that is not the
3 case. Eschelon specifically addressed depositions and the reasons why they likely would not "go
4 forward" with them in its previous response to Qwest's Motion to Reconsider. Further, Eschelon
5 has noticed no depositions in this matter. As for depositions that Qwest claims it desires to take in
6 this matter, Qwest expressed that intention informally in a letter to Eschelon dated May 30, 2006 –
7 more than *seven weeks* ago. Eschelon provided extensive discovery responses, including the
8 Eschelon document stamped documents attached to its direct testimony, to Qwest on June 8, 006,
9 more than *six weeks* ago. Qwest was fully aware of the Commission's ordered schedule and had
10 ample opportunity to notice depositions and to take them, if allowed, during those many weeks.
11 The lack of depositions in this matter to date is a choice by Qwest and provides no reason for
12 altering the procedural schedule that has been in place since June 6, 2006. And, there is no motion
13 pending to do so in any event, as it was deemed denied.

14 Counsel for Eschelon also have very tight schedules. With interconnection negotiation
15 arbitrations approaching on a variety of issues in six states, the schedules are going to get worse,
16 not better. Currently, the arbitration schedule for the six states agreed upon by counsel for Qwest
17 does not conflict with the October 2-5, 2006 hearing date established by this Commission in this
18 matter. The same cannot be said for the January 29-31, 2007 dates proposed by Qwest in the
19 motion rejected by this Commission. Qwest's proposed dates directly conflict with the dates of
20 January 23 through February 7, 2007 for the Arizona Qwest-Eschelon interconnection agreement
21 arbitration to which Qwest's arbitration counsel have agreed, subject to Commission approval.
22 Qwest's Motion to Reconsider already has been deemed denied, and the parties need to proceed
23 per the ordered schedule.

24 Conclusion

25 In sum, Eschelon asks the Commission to deny Qwest's Request for Hearing, if any action
26 is required, as Qwest's Motion to Reconsider was deemed denied on June 29, 2006.

1 RESPECTFULLY SUBMITTED this 21st day of July 2006.

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20 filed this 21st day of July 2006 with:

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